



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 20, 2022

IN THE MATTER OF:

Appeal Board No. 626627

PRESENT: GERALDINE A. REILLY, MEMBER

In combined Appeal Board Nos. 619716, 619717 and 619718, the Appeal Board, on its own motion pursuant to Labor Law § 620 (3), reopened and reconsidered the

combined decisions of the Administrative Law Judge ("ALJ") filed August 26, 2021, which sustained the initial determinations, disqualifying the claimant from receiving benefits, effective August 9, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$6005.25 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation of \$1500.00 recoverable pursuant to § 2104

(f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance benefits of \$900.00 recoverable pursuant to 44 CFR § 206.120 (f)(5); reducing

the claimant's right to receive future benefits by eight effective days; and charging a civil penalty of \$900.79 on the basis that the claimant made a willful misrepresentation to obtain benefits.

In combined Appeal Board Nos. 626627, 626628 and 626629, the Appeal Board granted the claimant's applications to reopen and to reconsider the combined decisions of the Administrative Law Judge filed October 7, 2022, which sustained the initial determinations due to the claimant's second default for non-appearance at a further hearing held pursuant to the Board's remand order filed April 8, 2022.

Our review of the record reveals that the cases should be remanded to hold further hearings. On appeal, the claimant has indicated that he failed to appear at the last remand hearing because he did not receive the Notice of Hearing nor a telephone call to participate in the hearing. In the interests of justice, the Board has determined to provide the claimant and the employer another opportunity to appear and testify in this matter.

We note that the record was not sufficiently developed on the initial determinations of voluntary separation, recoverable overpayment of benefits, and willful misrepresentation to obtain benefits. The parties should have another opportunity to submit additional testimony and other evidence on these issues.

At the further combined hearings, the parties will testify as to the claimant's separation from employment on August 8, 2020. In particular, additional testimony and evidence will be taken as to the details of the commute to and from the claimant's home to the employer's place of business including the duration, distance, and difficulty; the availability of alternative transportation methods; the cost and accessibility of the alternatives; any accommodations requested from or offered to the claimant thereafter by the employer; how the claimant was able to get to work in July and August 2020; what discussions were had with the employer as to the claimant's continued employment; and what incident prompted the claimant to decide that he could no longer work after August 8, 2020. Any documentary evidence in support of such testimony shall be properly entered into the record after the opportunity for objection.

Also, further testimony shall be taken as to the certification made by the claimant on September 6, 2020. In particular, the parties will testify further as to the method of the claimant's certification on September 6, 2020; whether it was via the telephone or via the internet/web; the questions asked of the claimant based upon the certification method; the responses offered by the claimant on September 6, 2020; and the reason for his responses on September 6, 2020. Any additional documentary evidence including the Department of Labor's certification script of questions posed via the internet and/or the telephone, will be properly entered into the record after an opportunity for objection.

The Judge will elicit any further testimony or evidence necessary to complete

the record.

Now, based on the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the combined case shall be, and the same hereby are, remanded to the Hearing Section to hold combined hearings upon due notice to all parties and their representatives; and it is further

ORDERED, that the combined hearings shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the combined hearings, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on all the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

GERALDINE A. REILLY, MEMBER